

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL RODRIGUEZ,

Case No. 2:19-cv-02074-ART-VCF

Plaintiff,

ORDER

v.

WELL PATH, *et al.*,

Defendants.

Pro se Plaintiff Michael Rodriguez brought this case in forma pauperis on December 3, 2019. (ECF No. 1.) The operative complaint is the Third Amended Complaint (ECF No. 35), which was screened by this Court on June 9, 2022 (ECF No. 38). Before the Court are: (1) Defendants Naphcare, Inc. (“Naphcare”), Dr. Harry Duran, Kendra Meyer, and Lee Meisner’s motion to dismiss (ECF No. 58) on the basis of issue and claim preclusion by an earlier filed case before this Court, *Rodriguez v. Naphcare, Inc.*, 2:17-cv-02344-RFB-DJA, as well as on timeliness grounds; (2) Plaintiff’s first and second motions to extend time to respond to the motion to dismiss (ECF Nos. 68, 73); (3) Defendant Naphcare’s motion for leave to file reply in support of its motion to dismiss (ECF No. 78); and (4) Plaintiff’s motion to stay the case (ECF No. 83). For the reasons set forth in this order, the Court: (1) grants the motion to dismiss (ECF No. 58); (2) grants Plaintiff’s motions to extend time to respond and Defendant Naphcare’s motion for leave to file reply nunc pro tunc (ECF Nos. 68, 73, 78); and (3) denies Plaintiff’s motion to stay the case (ECF No. 83) in light of this order, but directs the parties to meet and confer and submit a revised discovery plan and scheduling order.

I. MOTION TO DISMISS

Following the Court’s screening order (ECF No. 38), Plaintiff brings claims against ten Defendants: Naphcare, Dr. Larry Williamson, Dr. Harry Duran,

1 Kendra Meyer, Lee Meisner, Captain Rich Forbus, Fred Meyer, Las Vegas
2 Metropolitan Police Department (“LVMPD”), Earl Salvejo, and Hugh Rosett. Four
3 Defendants, namely Naphcare, Dr. Harry Duran,¹ Kendra Meyer, and Lee
4 Meisner, move to dismiss the claims against them on the basis of claim and issue
5 preclusion due to the earlier filed and presently ongoing case *Rodriguez v.*
6 *Naphcare, Inc.*, 2:17-cv-02344-RFB-DJA (“*Rodriguez v. Naphcare*”). (ECF No. 58.)

7 In *Rodriguez v. Naphcare*, Plaintiff names as defendants Naphcare, Dr.
8 Duran, and Meyer, among others, and alleges that the defendants failed to
9 adequately treat Plaintiff for his severe spinal pain. (ECF No. 84 in *Rodriguez v.*
10 *Naphcare*.) The Second Amended Complaint alleges that Plaintiff’s spine was
11 injured in a motor vehicle accident in 2006 and that he was on a course of
12 treatment and was recommended for surgery before he was ordered into custody
13 at the Clark County Detention Center (“CCDC”) in 2010, for which Defendant
14 Naphcare was contracted to provide all inmate medical care. (*Id.* at 3, 6.) For
15 several years Plaintiff received an effective course of treatment consisting of pain
16 and anxiety medication, trigger point injections, and medically authorized items
17 until August of 2015 when he was suddenly removed from the sick call schedule
18 allegedly without any reason or medical justification, causing Plaintiff to cease
19 receiving treatment and to suffer preventable and unnecessary pain. (*Id.* at 7.)
20 Grievances filed by Plaintiff in 2015 and 2016 allegedly went ignored by the
21 defendants. (*Id.*) Plaintiff’s allegations against Dr. Duran and Meyer are that they
22 failed to establish and implement policies to ensure Plaintiff would be provided
23 appropriate medical care and ignored grievances. (*E.g., id.* at 13.)

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25 ¹ A notice of suggestion of death was filed for Dr. Duran on August 24, 2022. (ECF Nos. 70, 72.)
26 Plaintiff filed a motion requesting directive (ECF No. 80) which the Court construed as a motion
27 for substitution of party under Fed. R. Civ. P. 25 (ECF No. 85). The Court ordered counsel for
28 Defendants to undertake an investigation regarding the decedent’s estate to obtain information
about the representative of the estate and inform the representative of this action. (ECF No. 85.)
The Court then stayed that order pending the outcome of the instant motion to dismiss since the
motion to dismiss would be dispositive of the claims against the estate of Dr. Duran. (ECF No.
87).

1 In the instant case, Plaintiff claims that in January of 2018, Dr. Duran
2 documented a hydrocele but failed to ensure any diagnostics or monitoring. (ECF
3 No. 38 at 7.) Plaintiff also alleges that in September of 2018 Naphcare was ordered
4 by the court in his criminal case to provide an evaluation and CT scan of Plaintiff
5 and delayed doing so. (*Id.* at 8.) Plaintiff states that Charge Nurse Meisner had a
6 conversation with Plaintiff in December of 2018 in which Meisner agreed to have
7 Plaintiff evaluated by a doctor other than Dr. Williamson and provide a sick call
8 to address Plaintiff's pain management, and Meisner subsequently refused to
9 provide this plan of care. (*Id.*) Plaintiff alleges that Dr. Duran and Meyer failed to
10 respond to Plaintiff's repeated complaints regarding his pain management
11 treatment during "MAC meetings" in January and October of 2018 and April of
12 2019 in which medical complaints and grievances were reviewed systemically.
13 (*Id.* at 9.)

14 A court may dismiss a plaintiff's complaint for "failure to state a claim upon
15 which relief can be granted." Fed. R. Civ. P. 12(b)(6). All factual allegations set
16 forth in the complaint are taken as true and construed in the light most favorable
17 to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). The
18 preclusive effect of a federal court judgment is determined by federal common
19 law. *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008). In a federal question case,
20 federal courts apply a uniform federal rule of claim preclusion. *Id.* Namely, a
21 second case is barred by claim preclusion if: (1) the case involves the same claim
22 or cause of action as the first case; (2) the first case reached a final judgment on
23 the merits; and (3) the cases involve identical parties or privies. *Media Rts. Techs.,*
24 *Inc. v. Microsoft Corp.*, 922 F.3d 1014, 1020–21 (9th Cir. 2019). Claim preclusion
25 does not apply to claims that accrue after the filing of the operative complaint in
26 the first case. *Id.* The moving party bears the burden to establish that preclusion
27 applies. *Id.* (citing *Taylor*, 553 U.S. at 906-07).

28 It is clear that Naphcare, Dr. Duran, and Meyer are parties in both cases,

1 though Meisner is only a party in the instant case. On the second factor, the
2 moving Defendants argue that the denial of Plaintiff's motion to file a third
3 amended complaint in *Rodriguez v. Naphcare* constitutes a final judgment on the
4 merits. (ECF No. 58 at 4; ECF Nos. 246, 260, 284 in *Rodriguez v. Naphcare*.)
5 However, the moving Defendants do not explain how the proposed third amended
6 complaint in that case relates to the claims in the instant case. Rather, as
7 explained in the Report and Recommendation in which Magistrate Judge Daniel
8 J. Albregts recommends denial of Plaintiffs motion to file a third amended
9 complaint, Plaintiff sought to add allegations relating to the personal
10 participation of Sheriff Joe Lombardo, which were recommended to be denied as
11 futile. (ECF No. 260 in *Rodriguez v. Naphcare* at 2.) It appears that the claims
12 against Naphcare, Dr. Duran, and Meyer remain live in *Rodriguez v. Naphcare*.
13 (See ECF No. 320 in *Rodriguez v. Naphcare*.)

14 The lack of a final judgment on the merits in the earlier filed case is enough
15 to defeat the assertion of claim preclusion. Nonetheless, the Court also notes on
16 the third factor that the moving Defendants argue that the claims in the instant
17 case are based on the same claims that were or could have been brought in
18 *Rodriguez v. Naphcare* since "the underlying body of facts underlying Plaintiff's
19 2017 case are substantially the same to the set of facts surrounding his
20 allegations against the moving Defendants in this case." (ECF No. 58 at 5.)
21 However, the moving Defendants do not elaborate on precisely which claims are
22 within the same set of facts. Rather, as Plaintiff points out, it appears that
23 Plaintiff brings a claim against Dr. Duran in the instant case for the medical
24 condition of hydrocele, not for the management of his chronic spinal pain, which
25 is the focus of *Rodriguez v. Naphcare*. (ECF No. 74 at 6.) It further appears that
26 Plaintiff's allegations against Naphcare in the instant case concern a delayed
27 evaluation and CT scan which likewise do not relate to Plaintiff's chronic spinal
28 pain.

1 Finally, regarding the timeliness of the claims against Meisner, the Court
2 does not see how the claim is untimely. The Court agrees with the moving
3 Defendants that the limitations period for Plaintiff's § 1983 claims is two years
4 viz. NRS 11.190. Plaintiff alleges that Meisner met with Plaintiff in December of
5 2018 and thereafter failed to provide care to Plaintiff. Plaintiff describes this
6 conduct in Plaintiff's original complaint in this case, which was filed on December
7 3, 2019. (ECF No. 1-1 at 12.) The subsequent amendments to the complaint relate
8 back since this conduct was set out in the original complaint. Fed. R. Civ. P.
9 15(c)(1)(B). Plaintiff's claim against Meisner is timely.

10 The moving Defendants have not carried their burden to show that claim
11 preclusion or untimeliness bar Plaintiff's claims against them. Defendants'
12 motion to dismiss (ECF No. 58) is denied. Plaintiff's first and second motions to
13 extend time to oppose Defendants' motion to dismiss (ECF Nos. 68, 73), and
14 Defendant Naphcare's motion for leave to file a reply in support of the motion to
15 dismiss (ECF No. 78) are granted nunc pro tunc.

16 **II. MOTION TO STAY**

17 Plaintiff filed a motion to stay the case on December 7, 2022. (ECF No. 83.)
18 Plaintiff cites the pending motion to dismiss as well as the suggestion of death
19 for Dr. Duran as reasons he is unable to present any discovery requests, as well
20 as the fact that he has been unable to receive case law research materials due to
21 the Xerox machine being broken and scheduled for repair. (*Id.* at 3-5.) Plaintiff
22 also states that he has not yet received initial disclosures from Defendants as
23 agreed upon. (*Id.* at 5.)

24 Since the motion to dismiss is now resolved, the Court denies Plaintiff's
25 motion to stay the case. However, the Court acknowledges that Plaintiff may not
26 have had adequate time to participate in discovery. As such, the parties are
27 directed to meet and confer and submit a revised discovery plan and scheduling
28 order within 30 days of the date of this order.

1 **III. CONCLUSION**

2 It is therefore ordered that Defendant Naphcare, Dr. Duran, Meyer, and
3 Meisner's motion to dismiss (ECF No. 58) is denied.

4 It is further ordered that Plaintiff's first and second motions to extend time
5 to oppose Defendants' motion to dismiss (ECF Nos. 68, 73), and Defendant
6 Naphcare's motion for leave to file a reply in support of the motion to dismiss
7 (ECF No. 78) are granted nunc pro tunc.

8 It is further ordered that Plaintiff's motion to stay the case (ECF No. 83) is
9 denied.

10 It is further ordered that the parties must meet and confer and submit a
11 revised discovery plan and scheduling order within 30 days of the date of this
12 order.

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15 DATED THIS 29th day of March 2023.

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19 ANNE R. TRAUM
20 UNITED STATES DISTRICT JUDGE
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